

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Philip D. Moeller,
and Jon Wellinghoff.

San Diego Gas & Electric Company

v.

Docket No. EL00-95-000, et al.

Sellers of Energy and Ancillary Services Into
Markets Operated by the California
Independent System Operator Corporation and
the California Power Exchange

Investigation of Practices of the California
Independent System Operator and the
California Power Exchange

Docket No. EL00-98-000, et al.

ORDER ON MOTION FOR RELEASE OF DATA

(Issued August 25, 2006)

1. On August 2, 2006, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) issued its decision¹ concerning the scope of refunds in this proceeding. On August 16, 2006, the California Parties² filed a Motion for Release of ISO/PX Data and Request for Expedited Treatment (Motion), requesting that the Commission order the California Independent System Operator Corporation (CAISO) and the California Power Exchange Corporation (PX) to

¹ *Pub. Utils. Comm'n of California v. FERC*, 2006 U.S. App. LEXIS 19476 (9th Cir. Aug. 2, 2006) (*CPUC*).

² The California Parties are the People of the State of California *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company.

release certain data no later than August 31, 2006. The California Parties state that release of the specified data is necessary to facilitate settlement discussions among the parties pursuant to the directives of the Ninth Circuit's *CPUC* decision.

2. In this order, we grant the California Parties' Motion, and order the CAISO and the PX to release the specified data on or before September 12, 2006, as discussed herein.

Notice and Responsive Pleadings

3. On August 17, 2006, Santa Clara, Redding and Modesto³ filed an answer in opposition to the California Parties request for a shortened response time. On August 18, 2006, the Commission issued a Notice Shortening Answer Period for responses to the California Parties' Motion, requiring answers by August 23, 2006.

4. On August 23, 2006, the following parties filed answers or responses to the California Parties' Motion: Northern California Power Agency (NCPA); Santa Clara and Modesto; Arizona Electric Power Cooperative (AEPCO); Southern Cities⁴; Competitive Supplier Group (CSG); Los Angeles Department of Water and Power (LADWP); the CAISO and the PX.

The California Parties' Motion

5. In their Motion, the California Parties state that while parties may disagree over the appropriate treatment of the May 1, 2000 through October 1, 2000 period, the notion that up-to-date CAISO and PX data concerning this time period is relevant to settlement discussions should not be controversial. The California Parties further state that, pursuant to *CPUC*, they expect to engage in bilateral discussions with numerous parties, and plan to host a general settlement conference in California on or about September 19-20, 2006. In order to prepare for these upcoming discussions, the California Parties state that they require the most up-to-date CAISO and PX data, especially concerning transactions during the May 1, 2000 through October 1, 2000 period.

6. As *CPUC* also reversed the Commission's determinations concerning certain transactions that were excluded from refund remedy (i.e., multi-day transactions and exchange transactions), the California Parties assert that *CPUC* raises new questions about the sufficiency of funds currently held in the various

³ City of Santa Clara, California, d/b/a Silicon Valley Power; City of Redding, California; and the Modesto Irrigation District.

⁴ Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California.

CAISO and PX escrow accounts, and the amount and form of the collateral posted by market participants. The California Parties contend that information concerning the amount of funds and collateral available is needed for settlement discussions, as the availability of such funds has proven to be an important element of all of the settlements reached to date. The California Parties therefore request additional information including account balances relating to the May 1, 2000 through October 1, 2000 period, payment dates and information, and available cash and non-cash collateral amounts so as to better evaluate the available sources of settlement funds.

7. Specifically, the California Parties request that the Commission order the release of the following data:

CAISO:

- (1) CAISO Market Settlement Records (adjustment and detail records using standard specifications for settlement files) – Trade Date Range May 1, 2000 to October 1, 2000.
- (2) A complete list of all collateral amounts held by the CAISO for each market participant for the period May 1, 2000 to June 20, 2001, whether in the form of cash or in other forms such as letters of credit.
- (3) Summary positions by Scheduling Coordinator ID, including account payable/receivables, allocations of Good Faith Negotiations, interest adjustments, preparatory rerun adjustments, and refund amounts owed or owing.

PX:

- (1) PX Forward Market Settlement Records – Trade Range May 1, 2000 to October 1, 2000 (February 23, 2006, FERC re-run file layout, PX_FwdMkt_Revenue_Data_RefundPeriod.txt, except for fields that are not currently available for this date range, such as the MMCP).
- (2) PX Real Time Market Settlement Records – Trade Range May 1, 2000 to October 1, 2000 (February 23, 2006, FERC re-run file layout, PX_RT_Revenue_Data_RefundPeriod.txt, except for fields that are not currently available for this date range, such as the MMCP).
- (3) A complete list of all collateral amounts held by the PX for each market participant for the period May 1, 2000 to June 20, 2001, whether in the

- form of cash or in other forms such as letters of credit, as well as a listing of chargeback amounts currently held for each participant.
- (4) Account summaries by market participant showing the net position of amounts owed or owing, including PX wind-up costs and other adjustments.

8. The California Parties note that most of this information has already been provided by the CAISO and the PX either in response to data requests during the Hundred Days of Discovery,⁵ or in various filings made by the CAISO and the PX. However, the California Parties state that some of this data has changed as a result of preparatory rerun adjustments, the addition of CAISO good faith negotiation settlements and dispute resolutions, CAISO interest adjustments, and the PX wind-up cost settlement. Therefore, according to the California Parties, a release of the above information by the CAISO and the PX would result in a re-issue of the data that incorporates the latest changes, thereby allowing all parties to work with the most accurate and up to date information.

Confidentiality Issues

9. The California Parties state that confidentiality concerns should not delay release of any of this data. The California Parties further assert that the data that they seek relates to market transactions that occurred many years ago, in markets that operated under very different rules than those that apply today; thus any need that there may have been to preserve the confidentiality of such data no longer exists. Additionally, California Parties note that earlier or preliminary versions of much of this data have been provided by the CAISO and the PX (for example during the Hundred Days of Discovery in 2003) and these now-outdated versions of the same data sought herein have become public. Thus the Commission should

⁵ On November 20, 2002, the Commission issued an order in this proceeding that allowed parties to conduct additional discovery into market manipulation by various sellers during the western power crisis of 2000 and 2001, and specified procedures for adducing this information. *See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., et al.*, 101 FERC ¶ 61,186 (2002) (Discovery Order). The Discovery Order also required that no later than February 28, 2003, the parties submit directly to the Commission additional evidence and propose new or modified findings of fact with specific citations to the record to support any proposed substantive recommendations. By order dated February 24, 2003, the Commission extended the February 28, 2003 deadline to March 3, 2003. *See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., et al.*, 102 FERC ¶ 61,194 (2003).

order the CAISO and the PX to provide the data to the California Parties without any conditions.

10. The California Parties further state that if the Commission concludes that confidentiality is required for some of this data, counsel and relevant personnel of the California Parties are signatories to the Common Protective Order entered in this proceeding, and ask that the data be provided forthwith subject to that Protective Order.

Answers

11. Southern Cities does not object to the release of data requested by the California Parties for the purposes set forth in their Motion. Southern Cities concurs with the California Parties that the release of the data may facilitate settlement negotiations. While not objecting to the release of data, CSG states that it fails to see the urgency of the California Parties' request. CSG further argues that if the costs to the CAISO and the PX to produce the data are substantial, production of the data should be timed to avoid needless expenditures.

12. LADWP argues that it and other non-public utilities have been paid for energy delivered to the CAISO and PX markets during the May 1, 2000 through October 1, period and are not liable for refunds for transaction at issue during that period. Therefore, LADWP asserts that the data requested by the California Parties are not relevant to discussions of settlement with non-public utilities. LADWP further argues that the Commission should require the release of additional data that would be relevant to any settlement discussions involving non-public utility sellers that delivered energy after October 1, 2000.

13. AEPCO, Santa Clara and Modesto, and NCPA object to the release of the data. AEPCO argues that the California Parties do not justify access to confidential, proprietary data and do not describe with any specificity how the data they seek to obtain will be an improvement upon the data they already have. AEPCO also raises issues concerning the costs incurred by the CAISO and the PX in producing the data. AEPCO further argues that the Commission should first address the filings of AEPCO and other non-jurisdictional sellers that the PX release their collateral and that the ISO not calculate any putative refund liability of non-jurisdictional sellers.

14. Santa Clara and Modesto, along with NCPA, argue that the California Parties' data request is beyond the scope of issues set for hearing in this proceeding. Santa Clara and Modesto assert that the Ninth Circuit has not ordered the Commission to expand the time period for refunds. Santa Clara and Modesto argue that because the Commission did not set transactions during the May 1, 2000 through October 1, 2000 time period for hearing in this proceeding, such

transactions are beyond the scope of permissible discovery. In addition, they argue, because transactions during this period have not been the subject of litigation, the requested data has not been scrutinized by the parties to confirm accuracy or completeness. Santa Clara and Modesto further assert that the Ninth Circuit has not directed refunds for the period, but simply concluded that, when faced with allegations that a tariff had been violated, the Commission should have considered whether the tariff has been violated and what relief is appropriate. According to these parties, the data is not needed for settlement discussions and is improper with respect to governmental entities which are not subject to refund obligations in this proceeding.

15. The PX does not take a position in support of or in opposition to the Motion. However, it states that it has informed the California Parties of the delay in producing the data in the requested file format. In this regard, the PX further states that the California Parties have agreed that the PX shall produce the data for the Day-Ahead/Day-Of and the Real Time markets in the current form of its settlement records, and the PX shall not be required to produce such data in the file format originally requested. With respect to the PX Trading Services (CTS) market, the PX states that the California Parties have reiterated their request that the settlement records be produced in the "FERC re-run file layout" format. The PX states that it can produce the CTS settlement records in this format if the PX is accorded the four to six weeks necessary to complete such a project.

16. The CAISO does not object to the Commission requiring it to release the data specified by the California Parties. However, the CAISO has determined that it will require until September 6, 2006 to complete the process of assembling and releasing the data. Therefore, the CAISO requests that the Commission set the date for such release no earlier than September 6, 2006. The CAISO further explains that some of the categories of data requested by the California Parties from the CAISO involve some adjustments that have not yet been performed by the CAISO. The CAISO notes, for example, that the California Parties request data on the allocation of Good Faith Negotiations (GFNs). However, the CAISO states that it is still in the midst of resolving several GFNs, or making adjustments to account for the resolution of GFNs, that relate to the period identified by the California Parties. Therefore, CAISO states that data released in the next several weeks would necessarily not include adjustments relating to these GFNs. The CAISO requests that the Commission make clear in any order requiring the release of the identified data that such data shall be limited to adjustments made as of the date of release.

17. Several parties, including those objecting to the release of the data, urge that if the Commission should grant the California Parties' Motion, the release of the data should be subject to confidentiality protections. Similarly, several parties

request that the Commission order the CAISO and the PX release a complete set of the requested data to all parties who seek it, and not just to the California Parties. The CAISO points out that although much of the data that the California Parties request has been made public, it is certainly the case that some of it has not been made public. The CAISO further notes that determining which data falls into which category would be an extremely difficult and time-consuming task.

Commission Determination

18. We find that the specified data is necessary to facilitate the parties' settlement discussions to be undertaken in accordance with the Ninth Circuit's directive in *CPUC*. The Commission encourages settlement among parties, and we have found that when parties have access to all relevant data settlement negotiations are more likely to be fair and productive. We therefore require the CAISO and the PX to release the data to all parties that seek it, on or before September 12, 2006, as directed herein, and subject to the restrictions set forth below.

19. With respect to the issue of the costs that may be incurred by the CAISO and the PX in producing the data, we note that neither the CAISO nor the PX has provided any information regarding their anticipated respective costs. We will address this issue when and if we find that the costs of the data production outweigh the benefits of the parties having access to the data for purposes of settlement discussions in this proceeding.

20. We also reject the arguments of Santa Clara and Modesto, and NCPA regarding the scope of the data requested. We note that the Ninth Circuit has not yet issued its mandate and has expressly encouraged settlement discussions. Given the Ninth Circuit's directive that the parties engage in settlement discussions, we find that the parties should be given access to the data requested.⁶ Further, given the procedural posture of the case, we do not find it appropriate to exclude certain data from the California Parties' request.

21. In reliance upon the PX's representations regarding its ability to produce settlement records in the format requested by the California Parties, and the California Parties' willingness to accept an alternate format, we will require that the PX produce the data requested in categories (1) and (2), above, for the Day-Ahead/Day-Of and the Real Time Markets in the PX's current settlement records format, on or before September 12, 2006. The PX is not required to produce such

⁶ By way of comparison, we note that under the Commission's discovery rules, the scope of discovery is very broad, and encompasses information that may be inadmissible in a Commission proceeding. *See* 18 CFR § 385.402 (2006).

records in the “FERC re-run file layout” format. We further direct the PX to work expeditiously to produce the CTS market settlement records in the format requested on or before October 3, 2006. In reliance upon the CAISO’s representations regarding certain adjustments that it may not have performed at the date of the release of the data, we will permit the CAISO to limit its release of data to reflect adjustments that are made as of September 12, 2006. We direct the CAISO to perform the adjustments as expeditiously as possible to minimize the need to release unadjusted data. We further direct the CAISO to release updated data to the parties as soon as practicable after the adjustments are made.

22. With respect to LADWP’s arguments that we order the release of additional data, we note that we are ruling on the Motion that is before us at this time. If LADWP believes that additional data is necessary, it should file a motion for the release of such data.

23. We also find persuasive the parties’ arguments that we place confidentiality protections on the released data. Therefore, the data released shall be subject to the following restrictions:

- (a) The data released shall be made available only to those individuals who have signed the Protective Order applicable to this proceeding, and the released data shall remain subject to that Protective Order until further notice by this Commission.
- (b) All data shall be used only for the purposes identified by the California Parties in their Motion, i.e., settlement negotiations, and shall not be used by the California Parties for any other purposes absent the Commission’s approval.
- (c) All data released shall be subject to Rules 602 and 606.⁷

The Commission orders:

(A) The California Parties’ motion for release of CAISO and PX data is granted, as discussed in this order.

⁷ 18 CFR § 385.602, 606 (2006).

(B) The CAISO and the PX shall release the specified data, as discussed in this order, and subject to the restrictions set forth herein.

By the Commission. Commissioner Spitzer not participating.

(S E A L)

Magalie R. Salas,
Secretary.